

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>ARIBP064</b>			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>N/A e-filed</u> Signature <u>N/A e-filed</u>  Typed or printed name <u>N/A e-filed</u>	Application Number <b>10/043,357</b>		Filed <b>January 9, 2002</b>		
	First Named Inventor <b>Jennifer Kellam</b>				
	Art Unit <b>3691</b>		Examiner <b>Chuks N. Onyezia</b>		
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top; padding-bottom: 10px;"><input type="checkbox"/> applicant/inventor.  <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)  <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>50575</u>  <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="width: 50%; vertical-align: top; padding-bottom: 10px; border-left: 1px solid black; padding-left: 10px;"><u>/Robyn Wagner/</u> _____ Signature  <u>Robyn Wagner</u> _____ Typed or printed name  <u>408-973-2596</u> _____ Telephone number  <u>November 18, 2010</u> _____ Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.  <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)  <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>50575</u>  <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>/Robyn Wagner/</u> _____ Signature  <u>Robyn Wagner</u> _____ Typed or printed name  <u>408-973-2596</u> _____ Telephone number  <u>November 18, 2010</u> _____ Date
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<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.					

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# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:	KELLAM et al.	Examiner:	Chuks N. Onyezia
Application No.:	10/043,357	Art Unit:	3691
Filed:	January 9, 2002	Docket No.:	ARIBP064
Title:	METHOD OF BIDDING TO DRIVE COMPETITION IN AN AUCTION		

## **REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Office Action mailed June 22, 2010. The following remarks are respectfully submitted in support of Applicants' pre-appeal brief request for review filed herewith.

Claims 1, 2, 5-11, and 13-32 are pending.

The claimed subject matter of independent Claim 1 relates to a method, which can be used in an auction, where a plurality of bids is received from a plurality of bidders. A parameter is used to distinguish the bidders into at least two subsets (referred to as a "first subset" and a "second subset" in the claim). At least one identifier is assigned to the bidders in the first subset. The identifier is not assigned to or known to bidders in the second subset. A lowest bid is displayed to each of the bidders in the first subset, along with an identifier that is assigned to the bidder that submitted the lowest bid. Support for Claim 1 may be found, without limitation, at paragraphs [0029]-[0031] of the Specification.

Independent Claims 13 and 22 recite limitations similar to Claim 1.

### **Claim Rejections – 35 U.S.C. §103(a)**

Claims 1, 2, and 5-30 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Blalock et al. (Pub. No. 2001/0047284) in view of Sheth (Pub. No. 2001/0032170).

Claim 1 recites, in part, “assigning at least one identifier to the bidders in the first subset, wherein the at least one identifier is known to the bidders in the first subset and is neither assigned to nor known to the bidders in the second subset.”

On Page 3 of the Office Action, the Examiner states that Blalock teaches the “assigning at least one identifier to the bidders in the first subset” portion of Claim 1 at [0145].

In Figures 11-1 through 11-4 of Blalock, a matrix 132 has geographical regions as both row and column headings. Paragraph [0145] of Blalock explains that the lowest rate for shipping from one region to another can be determined by locating the cell having the appropriate origin (row) and destination (column).

In Blalock, “Zone:AL” and “Zone:AR” (shown in Figure 11-1) appear to be labels of geographic regions, and thus known by all parties at all times. Further, those labels do not appear to be used as identifiers of subsets of bidders.

Also on Page 3 of the Office Action, the Examiner states that Blalock teaches the “at least one identifier is known to the bidders in the first subset” portion of Claim 1 at [0061]. Paragraph [0061] of Blalock states, in its entirety:

“[0061] In this regard, depending on shipper preference, the method and system of the present invention conducts the negotiations though a blind bidding process or in a quasi-reverse auction format. Specifically, a shipper may choose not to allow carriers to view information associated with other carrier bids, or the shipper may choose to post bids ‘publicly’ via the web site to create a dynamic bidding process. In any event, most shippers have a variety of selection criteria with respect to an award of a transportation contract, and, as such, low bidding does not guarantee a carrier an award.”

This portion of Blalock thus discloses only that a shipper may **either** allow all carriers to view the bids of all other carriers (because the bids are made **public**), or to keep bids **blind** (i.e., not viewable by any of the other carriers). This portion of Blalock does not mention identifiers, and accordingly also does not disclose what is recited in Claim 1. Specifically, this portion of Blalock does not disclose selectively assigning an identifier to bidders and also does not disclose selectively sharing the assigned identifier with one group of bidders and not with another group.

On Page 4 of the Office Action, the Examiner acknowledges that Blalock does not teach “one identifier known to the bidders in the first subset and is neither assigned to nor known to the bidders in the second subset.” According to the Examiner, this limitation is found in Sheth at [0086] and [0090].

Paragraph [0086] of Blalock states, in its entirety:

“[0086] FIG. 9 is a flow diagram of a preferred embodiment for procuring services 204. The private marketplace user 108 invites 902 bids from a subset of the list of vendors. The subset may include all of the vendors on the specific list and may also include vendors that are not on the list. Alternatively, users 108 may request bids from vendors within the overall marketplace, similar to the online marketplace discussed below with respect to FIGS. 18-31. These invitations are sent via the network 102 in the central server 130 to the listed vendors 106. The private marketplace users 108 then receive 904 bids from the vendors 106. The users 108 evaluate these bids and choose 906 a winning vendor 106. As part of the evaluation of the bids, the users 108 and the vendors 106 may negotiate and clarify the terms of proposed agreements using private and public message boards to communicate.”

Paragraph [0090] of Blalock states, in its entirety:

“[0090] FIG. 11 is a preferred embodiment of the user interface for requesting quotes, or inviting bids from specific vendors. Once the private marketplace user 108 has posted a project, that user may request a quote for that project from any number of vendors 106. By checking the box 1102 next to the name 1104 of the vendor list and pressing the Request Quote button 1106, the private marketplace user 108 will send the posted project to the selected vendors 106. The private marketplace user 108 has the option of allowing the vendors to see other bids by checking box 1108. The user 108 thus, has control over whether the vendors bid against each other or submit blind bids.”

In summary, Sheth describes a system in which vendors selected from a list of known vendors are invited to participate in a private marketplace. (Sheth, [0086]). Additionally, those vendors selected to participate in the marketplace may be allowed to view the bids of other vendors based on a selection made by the private marketplace user. (Sheth, [0090]). Selecting

**participants** from a list of known vendors and then optionally allowing **all** participants to view each other's **bids** is different from the recited **selective disclosure** to participants of information. As with Blalock, Sheth does not teach what is recited in Claim 1. Specifically, as with Blalock, Sheth does not selectively assigning an identifier to bidders and also does not disclose selectively sharing the assigned identifier with one group of bidders and not with another group.

As neither Blalock, nor Sheth, whether considered individually, or in combination, disclose "assigning at least one identifier to the bidders in the first subset, wherein the at least one identifier is known to the bidders in the first subset and is neither assigned to nor known to the bidders in the second subset," Applicants respectfully submit that the Examiner has not made a prima facie rejection of Claim 1 under 35 U.S.C. §103(a).

Accordingly, Applicants respectfully request that the rejections under 35 U.S.C. §103(a) be withdrawn and Claim 1 be allowed. Independent Claims 13 and 22 also recite assigning "at least one identifier to the bidders in the first subset, wherein the at least one identifier is known to the bidders in the first subset and is neither assigned to nor known to the bidders in the second subset" and are believed to be allowable for the same reasons described above. Claims 2, 5-11, 14-21, and 23-30 depend, either directly or indirectly from one of the aforementioned claims and are therefore believed to be allowable for the same reasons described above.

Reconsideration of the application and allowance of all claims are respectfully requested based on the preceding remarks.

Respectfully submitted,

Dated: 11/18/2010

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